EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DEPUY MITEK, INC., a Massachusetts corporation, Plaintiff,	)	Civil Action
vs.	)	04-12457 PBS
ARTHREX, INC., a Delaware corporation, Defendant.	)	

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The deposition of DEBI PRASAD MUKHERJEE was taken on Tuesday, June 13, 2006, commencing at 9:08 a.m., at the offices of Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, N.W., Washington, D.C., before Susanne Bergling, Registered Merit Reporter and Notary Public.

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A. Then polypropylene is twice, polyester is about twice -- I mean polyester -- polyethylene is twice, then -- ultra high molecular weight polyethylene is twice than polypropylene and twice than polyester, so they are probably significantly higher for the ultra high molecular weight polyethylene, knot pull strength.
Q. Do you know if -- does he provide the standard deviation for the knot pull strength?
A. He didn't, but just looking at the figures, I mean, I can say that, looking at 1.35 or 1.44, you have to say that.
Q. Okay. So, he did not provide standard deviation in this chart.
A. Not in this chart.
Q. Now, for the knot configuration four equals one equals one, do you see that?
A. Yes.
Q. The polyethylene failed at 0.35 gigapascals, which is lower than the failure value for the nylon, polypropylene and polyester for the four equals one equals one configuration, right?
A. Yes.
Q. Okay. And that's because the polyethylene slipped, right?

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A. I don't use the word "sucked."
Q. I said "slipped."
A. Slipped, okay. I thought I heard... sorry.
Q. So, the polyethylene failed at the 0.35 gigapascal level for the four equals one equals one configuration because of the polyethylene slipping, right?
A. Right.
Q. Okay. Polyethylene, including ultra high molecular weight polyethylene, is a lubricious material, right?
A. Yes.
Q. Okay.
A. It's also polypropylene -- excuse me.
Q. Sure.
A. Polypropylene is also a lubricious material.
Q. It is?
A. Yes, it is.
Q. Okay. How about nylon or polyester, are they lubricious?
A. Nylon is also -- again, is lubricious.
Q. How about polyester?
A. Polyester will be less.

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Q. And nylon is less lubricious than polypropylene and polyethylene, right?
A. Probably.
Q. Okay. Now, in that chart, do you see how going across there's different knot configurations, two equals two, three equals two equals one, four equals one equals one, four equals four and four equals four equals four?
A. Yes.
Q. So, going from left to right, two equals two to four equals four equals four, the two equals two is a simpler knot than the four equals four equals four, right?
A. It's not simple or complex. It depends on what the surgeon wants to do. So, he can put more knots to make sure, and in general, they do. They will not stop at two by two. They will probably go to four by four by four to make sure it is there, especially ophthalmic use.
Q. Okay. And if you turn to page ARM 25137 --
A. Thirty-seven, yeah.
Q. Okay, of Cohan, the last paragraph of the first column --
A. Yeah.
Q. -- do you see the sentence beginning

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"Although"? The first column --
A. Did you say first column?
Q. First column, last paragraph.
A. Last paragraph.
Q. The sentence beginning, "Although."
A. "Although," yes.
Q. Cohan states, "Although laboratory testing showed that the polyethylene fiber has a somewhat lower knot holding strength with simpler knots than the other three polymers, more complex knots than are commonly used would realize polyethylene's great knot pull strength."
Do you see that?
A. Yes.
Q. Okay. So, Cohan was calling the more -- the additional knot configurations more complex, right?
A. That's what -- if he meant by that.
Q. Well, did you understand that's what he means when you read this reference?
A. Well, I -- I think that normally for a surgeon, they will put as many knots they can to make sure it's secure, and it's nothing complex or simple about it.
Q. Well, if you look at the author, the author

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in the monomer?
A. Yeah -- well, it's not a monomer, in the polymer.
Q. In the polymer?
A. Yeah.
Q. I'm confused. Are you saying that the monomer unit in all types of polyethylene is the same or different?
A. Mostly same, yeah.
Q. Mostly same, okay.
Would one of ordinary skill in the art between 1988 and 1992 think that the term "polyethylene" refers to low-density polyethylene or includes -- should I say includes low-density polyethylene?
A. Yeah, it would.
Q. It would? But not ultra high? Is that your opinion?
A. Ah, they will also include ultra high, because there are different properties, so they will include also ultra high, as well as low-density.
Q. Okay. I'd like to turn to polypropylene as used in the '446 patent, Exhibit 3 to your first report. Do you see the '446 patent?

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A. Yeah.
Q. Exhibit 3?
A. Exhibit 3.
Q. Right.
A. Yeah, I'm at this.
Q. No, Exhibit 3. I'm sorry, that's Exhibit 3. I'm sorry. Yeah, if you would go to column 4, please.
A. Yeah.
Q. Okay. Beginning at line 9 through 32, do you see that?
A. Nine through 32, yeah.
Q. Okay. That paragraph says, "Preferably, the continuous filaments which make up the first and second set of yarns are derived from nonabsorbable polymers."
Do you see that?
A. Yes.
Q. Is ultra high molecular weight polyethylene a nonabsorbable polymer?
A. Yes.
Q. Okay. Then it says, "In a preferred embodiment, the first set of yarns acts as lubricating yarns to improve the pliability, or compliance, and surface lubricity of the

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heterogenous braid."
Do you see that?
A. That is correct.
Q. Ultra high molecular weight is a lubricating yarn, right?
A. Yes.
Q. Okay. Then it says -- further down it says, "Such fiber forming polymers include perfluorinated polymers," and describes some of those, and then it says, "as well as non-perfluorinated polymers," and refers to polyethylene and PE, right?
A. Right.
Q. Okay. Ultra high molecular weight polyethylene came as fibers before 1992, right?
A. Yes.
Q. Okay. Now, do you see where in the end it says, "The preferred polymers for the first set are PTFE, PETFE, FEP, PE and PP"?
Do you see that?
A. Yes.
Q. Okay. That's column 4, lines 28 to 31.
Did you understand that sentence to refer to all types of polypropylene or just certain types of polypropylene?

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MR. TAMBURO: Objection, vague.
THE WITNESS: This is general purpose polyethylene, which it provides the lubricity and as well as pliability and compliance, not ultra high molecular weight polyethylene.
BY MR. BONELLA:
Q. Okay, that wasn't my question. Listen to the question.
Did you understand that sentence to refer to all types of polypropylene?
MR. TAMBURO: Objection, vague.
THE WITNESS: The fiber-forming polypropylene, yes.
BY MR. BONELLA:
Q. All types, okay.
Did you understand -- do you see where it refers to PVDF?
A. Yes.
Q. Did you understand this paragraph to be referring to all types of polyvinylidene fluoride?
A. Yes.
Q. Okay. Do you see where it refers to PTFE in that paragraph?
A. Yes.
Q. Did you understand it to be referring to

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why the inventors should be precluded from covering coated sutures with their patent?
A. No, I don't have any opinion.
Q. Okay. Do you have patents?
A. Yes.
Q. Okay. And in your patents, do you list things that are claimed?
A. In my patent, yes, I do.
Q. Okay. Do you describe things in your patents that may or may not be included within the invention, in the description of the invention?
A. I don't remember what my -- I don't have the patent in front of me.
Q. Well, in the claims, do you list every possible feature of the invention?
MR. TAMBURO: Objection, vague.
THE WITNESS: I tried to.
BY MR. BONELLA:
Q. But do you list -- don't you try to get as broad a claim as you can to cover as broad a concept of your invention?
MR. TAMBURO: Objection, vague. He's not a patent attorney.
THE WITNESS: I write what I -- my invention is, and patent attorney actually

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formalize all of this.
BY MR. BONELLA:
Q. Okay. And --
A. So, I cannot say anything more than that.
Q. You didn't want the broadest protection possible on your patents?
A. Whatever the patent attorney wants --
MR. TAMBURO: Objection, misrepresents the testimony. Give me a chance to object, Debi.
BY MR. BONELLA:
Q. But the patent attorney does?
A. Yes.
Q. Okay. So, it's not what you want in your patents; it's what the patent attorney wants in terms of protection?
A. Well, I provide the information, it's a back and forth --
Q. Right.
A. -- and I might say, well, it should be included in this, but patent attorney is the final one --
Q. Right.
A. -- who decides on the claims and the writing part of the -- as you know.
Q. Right. And isn't it the goal with your

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invention, don't you want to try to protect as broadly as possible?
A. Again, I may want something, but patent attorney might come out with something different, and Patent Office may come out with another determination.
Q. If there's things in your patent that you say may or may not be included within your invention, but they're not listed in the claims, do you think they should be excluded from the claims in your patent?
MR. TAMBURO: Objection, calls for a legal conclusion of a patent that we're not even -- that we don't have in front of us and asking him to interpret claim language of a patent we don't have in front of us. This is ridiculous.
THE WITNESS: It's so hypothetical, I cannot answer that question.
BY MR. BONELLA:
Q. You cannot answer it?
A. No.
Q. Okay. Do you see in the claim, claim 1 --
A. Uh-huh.
Q. -- it says, "A surgical suture consisting essentially of a heterogenous braid," do you see

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that?
A. Yes.
Q. Is FiberWire a surgical suture?
A. FiberWire is a surgical suture, yes.
Q. Does FiberWire consist essentially of a heterogenous braid?
A. Yes.
Q. Is FiberWire composed of a first and second set of continuous and discrete yarns in a sterilized, braided construction wherein at least one yarn from the first set is in direct intertwining contact with a yarn from the second set?
A. Their construction is quite different from this described here for FiberWire, what I know of FiberWire.
Q. Well, FiberWire has a heterogenous -- has a sheath that's a braid of ultra high molecular weight polyethylene and PET, right?
A. Sheath of those two materials, yes.
Q. Braided together.
A. Right.
Q. Okay. Well, is that sheath of FiberWire, is that a heterogenous braid?
A. Yeah, they are two different materials.

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Q. Okay. And is the FiberWire heterogenous braid composed of a first and second set of continuous and discrete yarns?
A. Yes.
Q. Okay. And is the FiberWire heterogenous sheath braid composed of discrete yarns in a sterilized braided construction?
A. Yes.
Q. And does the FiberWire heterogenous braided sheath have a braided construction where at least one yarn from the first set is in direct intertwining contact with a yarn from the second set?
A. There is intertwining contact, yes.
Q. Okay. And in the next column, it says, "Each yarn from the first set is composed of a plurality of filaments of a first fiber-forming material selected from the group consisting of PTFE, FEP, PFA, PVDF, PETFE, PP and PE."
Do you see that?
A. I see it.
Q. Does the FiberWire sheath have a yarn that meets that criteria?
A. No.
Q. Why?

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A. Because it has ultra high molecular weight polyethylene for its strength, and this PE does not include that ultra high molecular weight polyethylene.
Q. And that's your opinion?
A. Yes.
Q. Okay. And the next part says, "Each yarn from the second set is composed of a plurality of filaments of a second fiber-forming material selected from the group of PET, nylon and aramid."
Do you see that?
A. Yes.
Q. Does FiberWire meet that criteria?
A. It has the PET in it.
Q. So, it meets that criteria?
A. Uh-huh.
Q. And then it says, "Optionally a core."
FiberWire optionally has a core, right?
A. Right.
Q. Okay. If the Court defines PE, as used in that claim, to mean ultra high molecular weight polyethylene, if the Court defines PE to mean ultra high molecular weight polyethylene --
A. Not in this patent.
Q. No, if the Court --

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A. But that's -- the -- the FiberWire has ultra high molecular weight polyethylene core.
Q. Right.
A. Yes.
Q. If the Court says that PE, as used in the claims of the '446 patent, means ultra high molecular weight polyethylene, does FiberWire meet that clause (a) in column 9 of claim 1?
A. That's a hypothetical question. I cannot answer that.
Q. You can't answer it?
A. No.
Q. You can't provide an opinion one way or the other?
A. No.
Q. Okay. Claim 2, it says, "The surgical suture of claim 1 wherein the suture is attached to a needle."
Do you see that?
A. Yes.
Q. Is FiberWire sold attached to a needle?
A. Yes.
Q. Okay.
A. Not always, but I have seen the suture -- a needle with -- I mean a suture with a needle.

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Q. Okay, claim 8 says, "The surgical suture of claim 1 wherein the second set of yarns is PET."
FiberWire meets that criteria, right?
A. Yes.
Q. Claim 9 says, "The surgical suture of claim 8 wherein the volume fraction of the first set of yarns in the braided sheath and core ranges from about 20 to about 80 percent."
Do you see that?
A. I don't know at what percentage of PET and the ultra high molecular weight polyethylene is in the FiberWire.
Q. So, you don't have an opinion whether FiberWire meets that limitation?
A. No.
Q. Then in claim 12, it says, "The surgical suture of claim 8 wherein the suture is attached to the needle."
Do you see that?
A. Yes.
Q. FiberWire meets -- when FiberWire is sold attached to a needle, it meets that limitation?
A. Most of the time, but there is another non-needle part, too.
Q. Okay. You reviewed the prosecution history

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DEPUY MITEK, INC., a Massachusetts Corporation,

Plaintiff,

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Defendant.

Videotaped Deposition of DEBI PRASAD MUKHERJEE

- VOLUME TWO -

Washington, DC

Wednesday, June 14, 2006

The videotaped deposition of DEBI PRASAD MUKHERJEE, Volume Two, was held on Wednesday, June 14, 2006, commencing at 9:12 a.m., at the offices of Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, Northwest, Washington, DC, before Mary Ann Payonk, RDR, Certified Realtime Reporter, Registered Diplomate Reporter and Notary Public.

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MR. TAMBURO: Objection, vague.
A Enough information for a scanning microscopy is not very conclusive. They may or may not be.
BY MR. BONELLA:
Q You don't know?
A I don't know.
Q Okay. Does the coating on FiberWire prevent the PET yarns and the PTFE yarns from each providing their individual properties to FiberWire?
MR. TAMBURO: Objection, vague.
THE WITNESS: Now please correct me.
MR. TAMBURO: And -- and -- and -- and --
THE WITNESS: FiberWire does not contain a PTFE.
BY MR. BONELLA:
Q Oh, I'm sorry. Did I misspeak?
A You just said that.
Q I'm sorry.
Does the coating on FiberWire prevent the PET fibers, PET or ultra high molecular weight polyethylene fibers from providing contribution to FiberWire's properties?
MR. TAMBURO: Objection, vague.
A No.

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BY MR. BONELLA:
Q Okay. I'd like to go to your first report, invalidity, Exhibit 239. If we go to tab -- tab 9 --
A Tab 9.
Q There's an excerpt from Dr. Steckel's report.
A Right.
Q It's only a -- a one-page excerpt from his laboratory notebook.
A Yes.
Q Okay. Did you select that one page to put in your report out of his entire notebook, or were you given that one page?
A No, I have the entire notebook.
Q Okay. Why'd you pick -- did you consider the remainder of his notebook when -- when you select that individual page to attach to your report?
MR. TAMBURO: Objection. Well, not an objection, but if you need -- to the extent you need to read the context of why you cited this, please do so.
A Because it is very clear that he was talking about difficulties in core popping and braid looseness.

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BY MR. BONELLA:
Q Okay. Do you know what samples on that page he was talking about, when -- when they were made?
A Well, according to the lab, his notebook page signed was date of '89 -- I mean '89.
Q Right.
A That's what it says here.
Q Okay. Do you know when those samples were made that are discussed on that page?
A It's February 2, 1989 at the top. That's when the lab entry is.
Q Okay.
A I assume that's when the samples were made.
Q Okay. I'd like you to turn to Exhibit 26 to Exhibit 359, the report of Dr. Matthew Hermes, which contains a larger excerpt of Dr. Steckel's report right here. And if I could draw your attention to page DMI002617, okay?
A Right here.
Q Right here. 17. Okay --
A 1617.
Q Here's an entry on DMI002617 is June 6, 1988?

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A That's correct.
Q Okay. And if you look at the next page, shows a chart of samples, composite braid evaluation, braid constructions. Do you see that?
A Yes.
Q Did you consider that, those constructions?
MR. TAMBURO: Take your time, Dr. Mukherjee.
A I believe I did.
BY MR. BONELLA:
Q Okay. CBE15, do you see CBE15 sample?
A Yeah.
Q Do you know what the construction of that sample was?
MR. TAMBURO: Objection, vague.
A Was PTFE, 11049 in the denier and the fiber. This column on these other things are not there.
BY MR. BONELLA:
Q Do you know what the construction of CB15 was?
MR. TAMBURO: Objection, vague.
A If I understood, you are asking the --
BY MR. BONELLA: